UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALLIANZ GLOBAL RISKS U.S. INSURANCE COMPANY, as subrogee of Buffets Holdings, Inc.,	)	
Plaintiff	)	
v.	)	No.: 07 C 7149
NOVAK CONSTRUCTION COMPANY, an Illinois corporation,	)	Judge Samuel Der-Yeghiayan
Defendant Third Party Plaintiff	)	
v. RESTAURANT SPECIALTIES, INC., KIEFFER & CO., INC and AERO ELECTRIC & COMMUNICATIONS,	)	**JURY DEMANDED**
Third Party Defendants	)	

THIRD PARTY DEFENDANT, KIEFFER & CO., INC.'S ANSWER AND AFFIRAMTIVE DEFENSES TO THIRD PARTY COMPLAINT

NOW COMES the Third Party Defendant, KIEFFER & CO., INC., by and through its attorneys, Erik W. Nielsen and Brian G. Cunningham of Nielsen, Zehe & Antas, P.C., and for its Answer and Affirmative Defenses to Third Party Complaint, states as follows:

JURISDICTION AND VENUE

1. Plaintiff, ALLIANZ GLOBAL RISK U.S. INSURANCE COMPANY is a California corporation with its principal place of business in Burbank, California.

ANSWER: Third Party Defendant lacks sufficient information and knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Third Party Complaint; and therefore, neither admits nor denies same but demands strict proof thereof.

2. Plaintiff's subrogor, BUFFET HOLDINGS, INC. (hereinafter "BUFFET"), is a Delaware corporation with its principal place of business being in the State of Minnesota.

ANSWER: Third Party Defendant lacks sufficient information and knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 2 of the Third Party Complaint; and therefore, neither admits nor denies same but demands strict proof thereof.

3. Defendant/Third Party Plaintiff, NOVAK CONSTRUCTION COMPANY (hereinafter "NOVAK") is an Illinois corporation with its principal place of business in Chicago, Illinois.

ANSWER: Third Party Defendant lacks sufficient information and knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 3 of the Third Party Complaint; and therefore, neither admits nor denies same but demands strict proof thereof.

4. Pursuant to 28 U.S,C., §1441 *et. seq.*, and based upon the diversity of citizenship of the Plaintiff and defendant, this action was properly filed in federal court.

ANSWER: Based upon the allegations, it appears that this action was properly filed in federal court.

5. Venue is proper in this judicial district in that the accident alleged occurred on Cook County, Illinois, which is within the confines of the Eastern Division of the Northern District of Illinois. *See* 28 U.S.C. §1391(a) and 28 U.S.C. § 93(a).

ANSWER: Third Party Defendant admits the allegations contained in Paragraph 5 of the Third Party Complaint.

ALLEGATIONS COMMON TO ALL COUNTS

6. On December 20, 2007, Plaintiff filed its Complaint alleging that it suffered damages as a result of May 12, 2006 fire occurring at an Old County Buffet Restaurant located

in the Town & Country Shopping Mall at 445 East Palatine Road, Arlington Heights, Illinois (hereinafter "the restaurant"). A Copy of Said Complaint is attached as Exhibit 1.

ANSWER: Third Party Defendant admits the allegations contained in Paragraph 6 of the Third Party Complaint.

7. In Plaintiff's Complaint at Law, Plaintiff alleges that the fire started as a result of the removal of an exterior sign and the failure to remove, disconnect or lock out the electrical circuit for said sign.

ANSWER: Third Party Defendant admits the allegations contained in Paragraph 7 of the Third Party Complaint.

8. Defendant, NOVAK filed an answer to Plaintiff's Complaint denying all of the material allegations of said Complaint, and denying all of the negligent conduct attributed to it.

ANSWER: Third Party Defendant admits the allegations contained in Paragraph 8 of the Third Party Complaint.

9. At all times relevant, RESTAURANT SPECIALTIES, INC. (hereinafter "RSI") was an Ohio corporation with its principal place of business in Columbus, Ohio.

ANSWER: Third Party Defendant lacks sufficient information and knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 9 of the Third Party Complaint; and therefore, neither admits nor denies same but demands strict proof thereof.

10. At all times relevant, KIEFFER & CO., INC. (hereinafter "KIEFFER") was a Wisconsin corporation with its principal place of business in Sheboygan, Wisconsin.

ANSWER: Third Party Defendant admits the allegations contained in Paragraph 10 of the Third Party Complaint.

11. At all times relevant, AERO ELECTRIC AND COMMUNICATIONS

(hereinafter "AERO") was an Illinois corporation with its principal place of business in Loves Park, Illinois.

ANSWER: Third Party Defendant lacks sufficient information and knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 11 of the Third Party Complaint; and therefore, neither admits nor denies same but demands strict proof thereof.

12. Upon information and belief, prior to May 12, 2006 RSI contracted with BUFFET to act as general contractor for certain construction work occurring at the restaurant.

ANSWER: Third Party Defendant lacks sufficient information and knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 12 of the Third Party Complaint; and therefore, neither admits nor denies same but demands strict proof thereof.

13. Upon information and belief, prior to May 12, 2006 AERO entered into a subcontract with RSI to perform certain electrical work at the restaurant.

ANSWER: Third Party Defendant lacks sufficient information and knowledge to form a belief as to the truth or falsity of the allegations contained in Paragraph 13 of the Third Party Complaint; and therefore, neither admits nor denies same but demands strict proof thereof.

14. Upon information and belief, prior to May 12, 2006 KIEFFER entered into a contract with Visconsi Companies, Ltd., owner of the Town and County Shopping Mall, to perform certain work related to exterior signage at said shopping mall.

ANSWER: Denied. Third Party Defendant contracted with Lawler & Crowley Constructors, Inc., as evidenced by bulletins 0004 and 0006 issued on 9/28/05 and 10/4/05, respectively.

COUNT I: KIEFFER & CO., INC.

15-28. Third Party Plaintiff NOVAK restates and realleges paragraphs 1-14 as set forth above as paragraphs 15-28 of this Count I.

ANSWER: Third Party Defendant realleges and reincorporates its answers in Paragraphs 1 through 14 above, as though fully set forth herein.

29. Prior to May 12, 2006, KIEFFER removed the exterior sign that is the subject of Plaintiff's Complaint at Law.

ANSWER: Deny. Upon information and belief, the subject sign was removed by NOVAK and/or Midwest Sign & Lighting, Inc.

30. On and prior to May 12, 2006, KIEFFER owed a duty to exercise reasonable care and caution in the performance of its construction and demolition work at the restaurant.

ANSWER: Third Party Defendant admits only those duties imposed by law and further denies that it breached any said duties.

31. In spite of said duties, and in violation thereof, Third Party Defendant, KIEFFER was there and then guilty of the following negligent acts and/or omissions:

a. Improperly removed the subject sign;

b. Failed to inspect the electrical circuit following the removal of the sign to ensure that it was properly locked out;

c. Failed to warn BUFFET or Visconsi Companies, Ltd, that the sign was improperly removed so that BUFFET or Visconsi Companies, Ltd. could act accordingly to prevent damage to property;

d. Failed to observe applicable safety standards in the removal of the sign;

e. Failed to properly train its employees in the proper removal of the sign;

f. Failed to take all reasonable and necessary precautions to prevent a fire;

g. Failed to supervise its employees with respect to the removal of the sign;

h. Failed to use proper care and safety in performing its work;

i. Violated federal, state and local codes, statutes and such ordinances;

j. Any and all other acts and/or omissions constituting negligence which may become known through the course of discovery.

ANSWER: Third Party Defendant denies the allegations contained in Paragraph 31 of the Third Party Complaint, including subparagraphs a. through j.

32. As a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Third Party Defendant, KIEFFER, Plaintiff allegedly sustained injuries and damages.

ANSWER: Third Party Defendant denies the allegations contained in Paragraph 32 of the Third Party Complaint.

33. While defendant, NOVAK, denies any liability to Plaintiff, and further denies that Plaintiff was damaged to the extent alleged, if Plaintiff proves that it is entitled to any recovery whatsoever from NOVAK, then NOVAK asserts that its liability is far less in degree than that of Third Party Defendant, KIEFFER.

ANSWER: Third Party Defendant denies the allegations contained in Paragraph 33 of the Third Party Complaint.

34. In the event that Plaintiff recovers against NOVAK in any amount whatsoever, NOVAK is entitled to contribution from KIEFFER in an amount equal to KIEFFER' s percentage of fault in proximately causing or contributing to the cause of Plaintiff's damages in accordance with the Illinois Joint Tort Feasors Contribution Act.

ANSWER: Third Party Defendant denies the allegations contained in Paragraph 34 of the Third Party Complaint.

WHEREFORE, Third Party Defendant, KIEFFER & CO., INC., respectfully requests judgment in its favor and against Third Party Plaintiff, NOVAK CONSTRUCTION

COMPANY, an Illinois corporation, for costs and for any further relief deemed appropriate by this Court.

COUNT II: RESTAURANT SPECIALTIES, INC.

The allegations contained in Count II of the Third Party Complaint are not directed toward this answering Third Party Defendant; and therefore, Third Party Defendant makes no response thereto. To the extent any allegations may be construed as being directed toward this answering Third Party Defendant, any such allegations are denied.

COUNT III: AERO ELECTRIC AND COMMUNICATIONS

The allegations contained in Count III of the Third Party Complaint are not directed toward this answering Third Party Defendant; and therefore, Third Party Defendant makes no response thereto. To the extent any allegations may be construed as being directed toward this answering Third Party Defendant, any such allegations are denied.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses to Third Party Plaintiff's Counts or Claims, Third Party Defendant, KIEFFER & CO., INC., alleges as follows:

First Affirmative Defense

That the comparative or contributory fault on the part of the Plaintiff and/or Third Party Plaintiff was more than 50 percent of the proximate cause of the injury or damage for which recovery is sought and therefore, Plaintiff and/or Third Party Plaintiff are barred from recovering damages from this Third Party Defendant.

Second Affirmative Defense

In the event that the comparative or contributory fault on the part of Plaintiff and/or Third Party Plaintiff was not more than 50 percent of the proximate cause of the injury or damage for which they seek recovery, any damages allowed should be diminished in proportion to that amount of fault attributable to them.

Third Affirmative Defense

Third Party Defendant states that its fault, if any, is less than 25 percent of the total fault attributable to Plaintiffs, known Defendants and other unknown Defendants or Third Party Defendants, and in the event that the trier of fact finds in favor of Plaintiff and/or Third Party Plaintiff on the issue of liability, Third Party Defendant is severally liable for any of the damages claimed herein.

Fourth Affirmative Defense

Plaintiff and/or Third Party Plaintiff have failed to state a cause of action upon which relief can be granted.

Fifth Affirmative Defense

Plaintiff and/or Third Party Plaintiff are responsible for all or significant portion of any of their alleged injuries or damages by failing to mitigate their damages.

JURY DEMAND

Third Party Defendant demands a trial by jury.

Respectfully submitted,

s/Brian G. Cunningham________________
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